

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD LOWE,

Plaintiff,

CIVIL ACTION NO. 08-CV-10269

vs.

DISTRICT JUDGE DAVID M. LAWSON

SEETHA VADLAMUDI,
ELIZABETH TATE, RUTH
INGRAM, CORRECTIONAL
MEDICAL SERVICES, INC. and
PATRICIA CARUSO

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

**ORDER GRANTING DEFENDANT CORRECTIONAL MEDICAL SERVICES INC.'S
MOTION FOR LEAVE TO TAKE DEPOSITION OF PLAINTIFF (DOCKET NO. 70)
AND DENYING PLAINTIFF'S *EX PARTE* MOTION FOR PRE-AUTHORIZATION OF
PAYMENT FOR EXPERT SERVICES (DOCKET NO. 89)**

This matter comes before the Court on two motions. The first is Defendant Correctional Medical Services Inc.'s ("CMS") Motion for Leave to Take Deposition of Plaintiff filed on May 18, 2009. (Docket no. 70). The second is Plaintiff's *Ex Parte* Motion for Pre-Authorization of Payment for Expert Services filed on November 3, 2009. (Docket no. 89). No responses have been filed and the time for response has expired. Pretrial matters have been referred to the undersigned for decision. (Docket no. 8). The Court dispenses with oral argument on the motions pursuant to E.D. Mich. LR 7.1(e). These matters are now ready for ruling pursuant to 28 U.S.C. § 636(b)(1)(A).

I. Defendant CMS's Motion for Leave to Take Deposition of Plaintiff

This is a civil rights action filed by a Michigan state prisoner pursuant to 42 U.S.C. § 1983 alleging that Defendants violated his Eighth Amendment right to be free from cruel and unusual

punishment by being deliberately indifferent to his serious medical need. (Docket no. 1). Plaintiff is presently incarcerated at Mound Correctional Facility in Detroit Michigan. On March 16, 2009 the Court entered an order denying Defendant Vadlamudi's and Defendant Correctional Medical Services Inc.'s ("CMS") Motion to Dismiss and/or for Summary Judgment. (Docket no. 63). Defendant CMS filed this Motion for Leave to Take Deposition of Plaintiff on May 18, 2009. (Docket no. 70).

Federal Rule of Civil Procedure 30(a)(2)(B) provides that a party "must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2) . . . if the deponent is confined in prison." Fed.R.Civ.P. 30(a)(2)(B). Defendant CMS moves to depose Plaintiff for the purpose of defending against this action. The Court will grant Defendant's Motion to Depose Plaintiff. Counsel for Defendant CMS may make arrangements to take Plaintiff's deposition at a date and time convenient to the correctional facility in which Plaintiff is incarcerated.

II. Plaintiff's *Ex Parte* Motion for Pre-Authorization of Payment for Expert Services

Plaintiff was assigned pro bono counsel pursuant to 28 U.S.C. § 1915(e)(1) on June 8, 2009. (Docket no. 73). On November 3, 2009 Plaintiff's counsel filed this *Ex Parte* Motion for Pre-Authorization of Payment for Expert Services. (Docket no. 89). In the Motion Plaintiff moves for an order pre-authorizing payment for approximately nineteen hours of expert services at a rate of \$300 to \$400 per hour from this district's Non-Appropriated Fund.

As part of this district's pro bono program appointed counsel may apply to the court for payment of certain litigation expenses. Attorneys may request investigative or expert services necessary in the preparation of the case. Such services require prior approval of the judicial officer to whom the case is assigned. Requests for reimbursement from the Fund must be made on a form

available at the Clerk's Office and submitted to the Court Administrator for review. Because the proper procedure was not followed with regard to this matter, the Court will deny Plaintiff's *Ex Parte* Motion for Pre-Authorization of Payment for Expert Services and direct Plaintiff's counsel to contact the Clerk's Office for the Eastern District of Michigan for the appropriate forms and procedure.

IT IS THEREFORE ORDERED that Defendant CMS's Motion for Leave to Take Deposition of Plaintiff is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's *Ex Parte* Motion for Pre-Authorization of Payment for Expert Services is **DENIED**.

NOTICE TO THE PARTIES

Pursuant to Federal Rule of Civil Procedure 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: November 19, 2009

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: November 19, 2009

s/ Lisa C. Bartlett
Case Manager